

***United States Court of Appeals
for the Second Circuit***



**PETITION FOR
REHEARING**

76-7293

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

LEONARD IMANUEL,

Plaintiff

-against-

LYKES BROS. STEAMSHIP CO., INC.,

Defendant and Third-Party
Plaintiff-Appellant,

-against-

TODD SHIPYARDS CORPORATION,

Third-Party Defendant-Appellee

APPELLANT'S PETITION FOR A
REHEARING

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S T A T E M E N T

The Appellant, Lykes Bros. Steamship Co., Inc., respectfully petitions the Court for a rehearing in this case because it believes that in its decision this Court has been led to accept a theory of the Court below which was predicated upon an erroneous set of facts arriving at a theory of the accident which is demonstrably impossible.

The decision of this Court upon which a rehearing is requested is dated March 21, 1977. At pages 2501, et seq. (pages 11 et seq. of the typewritten copy) the Court gives consideration to the theory that the elevator platform was raised to a point where "the cables might well work their way off the wall sheave" and in consequence the "platform would fall" and "it could have snapped the cables against the bottom machined edge of the bulkhead with enough force to sever them cleanly and evenly." Calculations from the Appellee's own Exhibit "F" (311a) eliminate this as a plausible theory.

In Finding No.38 (58a) of the District Court there appears an erroneous figure with respect to the dimensions of the elevator shaft. This has unfortunately been repeated in the opinion of this Court at page 2501 (typewritten copy page 12). A description of the platform and shaft is better taken from the Appellee's Exhibit "F" (311a). This exhibit provides the athwartship dimensions of the shaft, i.e. it provides a picture looking either forward or aft.

The elevator shaft itself is 4'6" by 3'6" but it is the 3'6" dimension with which we are here concerned. It extends 10" above the weather deck. The elevator platform is 4' by 2'9" but again it is the thwartship dimension, i.e. 2'9" that we are concerned with, not the 4' dimension used by the Court.

The bitter ends of the cables are fastened 8" below the top of one side of the shaft, in other words above the weather deck, and run underneath the car and up to the idler sheave whose center is also 8" below the top of the shaft. From the idler sheave the cables run down to a drum located in the machine room. The distance from the center of the idler sheave to the top of the machine room is 4'2" and the distance from the top of the machine room to the center line of the drum is 3'0". From this it can be seen that the center of the drum is located 7'10" from the top of the elevator shaft, not 10' as stated by the Court.

A R G U M E N T

THE ELEVATOR PLATFORM WAS NEVER RAISED TO A POSITION WHICH WOULD ALLOW THE CABLES TO BE PULLED OFF THE STATIONARY WALL SHEAVE.

This Court at page 2497-8 (page 6 of the typewritten copy) accurately describes the configuration of the lift cables:

"The two cables, 5/16 inch in diameter, were attached to the drum and wound in grooves around it. These cables then extended upward from the lower side of the drum to a stationary wall sheave (or pulley), also double grooved, located just below the top of the shaft. The cables then went back down under the lift platform, passing under double grooved sheaves underneath and at both sides of the narrow part of the platform to the other side of the shaft. They then ran back up the opposite side of the shaft and were anchored near its top or 'bitter end.' "

The Appellee's Exhibit "F" (311a) provides dimensions for these runs of cable with the platform positioned level with the top of the elevator shaft, that is ten inches above the weather deck. For example:

- (i.) 7 feet 2 inches from the center line of the drum to the center line of the wall sheave.
- (ii) 1 foot 5 3/4 inches as the distance half way around the circumference of the idler sheave.
- (iii) 1 foot 1 1/2 inches from the center line of the wall sheave to the mid line of the car sheaves.
- (iv) 9 3/8 inches as the distance one quarter of the way around the circumference of the car sheave.
- (v) 2 feet 3 inches between the centers of the two car sheaves.
- (vi) 9 3/8 inches as the distance one quarter of the way around the circumference of the car sheave.
- (vii) 1 foot 1 1/2 inches from the center of the car sheave to the "bitter end".

The Court will undoubtedly notice that the total of the above lengths, that is the total run of cable from drum to "bitter end" with the platform at its normal top position is 14 feet 9 1/2 inches. The spot where the U.S. Salvage Surveyor Thompson placed the break, 16 feet 7 inches, would be still on the drum (165a) whereas that spot would have been off the drum

if in fact the platform had been stopped below the normal position as both Haag and Imanuel testified so as to permit them to reach the limit switches.

If, as the District Court theorized in its Finding No.38, the platform were raised to a point where "the sheaves beneath it would eventually approach the level of the wall sheave", the platform would have to be raised by not less than 1 foot 1-1/2 inches above the position shown in Exhibit "F". This is the position where the centers of the car and wall sheaves are at the same level. Because the cables run on the underside of the car sheaves and the top of the wall sheave, there is no horizontal pull upon them at any position of the car below this point. That would mean a shortening of the cable to the point where about 12 feet 6-1/2 inches were off the drum, substantially less than the total calculated by the Court on page 2502 (page 12 of the typewritten copy), using the improper figures. As an illustration we have annexed to this Petition a copy of Appellee's Exhibit "F" and an overlay showing the platform elevated to the point where the center line of the car sheave and wall sheave are at the same level.

It is impossible to conceive of two electricians standing upon an elevator platform in such a position. Under this theory the platform would be approximately two feet above the deck and about a foot above the top of the shaft. The upper guides of the platform would have risen above and come out of the guide rails and the platform supported by cables more than two feet below would wobble and tilt.

It would be pointless for the two men to stand on such an unstable platform when they could not possibly reach the limit switches now located beneath the platform and inaccessible from the platform.

Moreover, Judge Palmieri did state in his opinion (45a):

"Both men were standing on the platform checking a switch when Haag decided to leave to fetch a meter for further tests. * * * Just as Haag stepped off the lift platform and onto the main deck, Imanuel heard a loud grinding noise and the lift began a free fall. * * *" (Emphasis supplied).

To accept this theory, among other things, one would have to totally disregard not only the testimony of the men involved and the above conclusion of Judge Palmieri, but also the probabilities of human behavior. The law does not presume negligent disregard for one's own safety particularly when such act could accomplish nothing.

In short, the theory advanced by the District Court in finding No.38 has no support in the record and was not even suggested by Appellee's elevator expert, Joseph DiCocco (272a-289a). It is physically impossible. The point of the cable break would have been on the elevator drum safely out of the way of the falling platform. Accordingly, the Appellant's proof effectively rebuts the lower Court's third theory as it did the other two, hence the District Court's findings were clearly erroneous. The sole

plausible explanation for the accident is the one advanced by the Appellant, that is, that the cables were damaged by the shipyard during the course of repairs.

C O N C L U S I O N

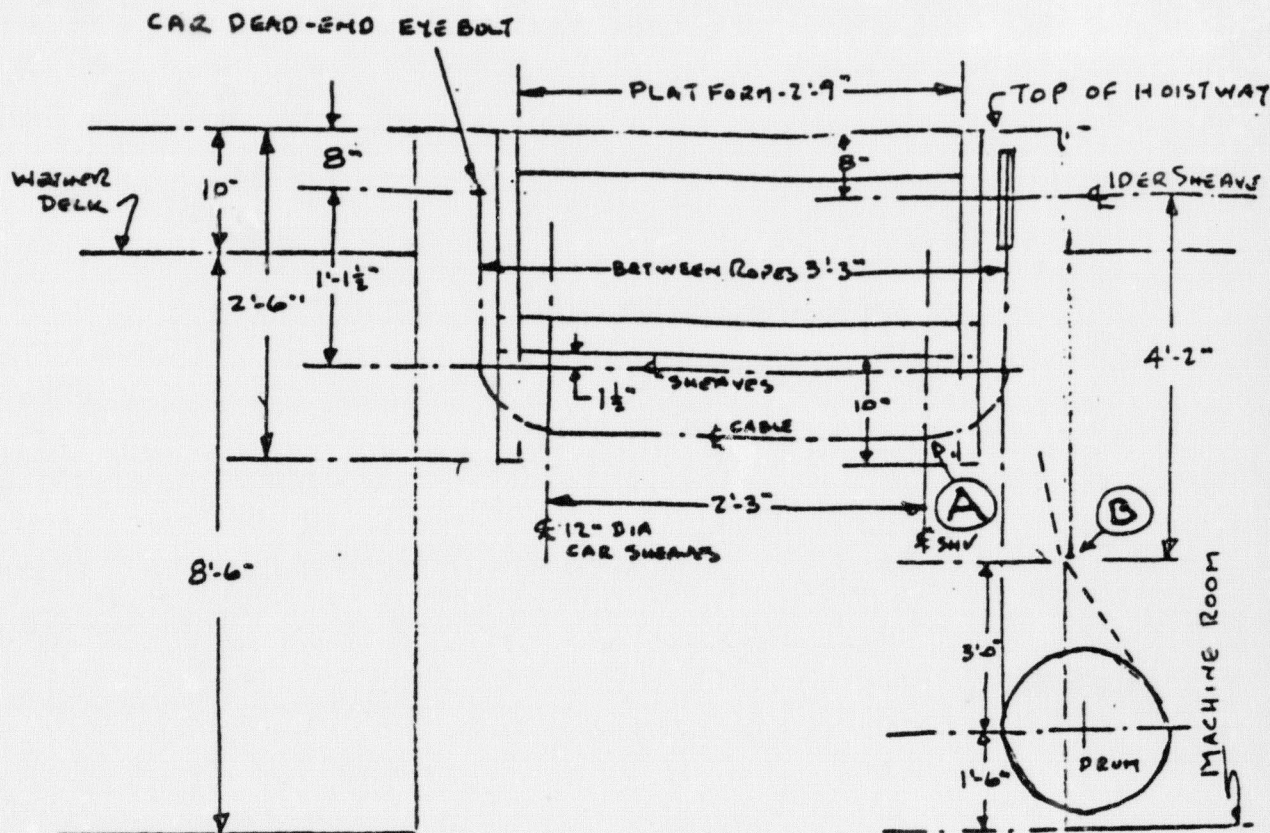
It is respectfully submitted that the Court has been mislead by a misstatement of the dimensions of the elevator shaft. Based upon the record and the evidence, there is but one plausible explanation for the accident involving Leonard Imanuel, that is that the elevator cables were damaged by the Appellee, Todd Shipyards Corporation. The Appellant respectfully requests that it be granted a rehearing, and upon such rehearing the decision of the District Court be reversed and the matter remanded for further hearings on the issue of damages.

Respectfully submitted,

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EXHIBIT "F" - DIAGRAM OF THE PLATFORM STOPPED
AT THE TOP OF THE SHAFT



LENGTH OF CABLE - CAR AT TOP
 EYEBOLT TO PITCH LINE CAR SHV 1'-1 1/2"
 25% OF 12" CAR SHV CIR 9 3/8"
 E ONE CAR SHEAVE TO E OF OTHER 2'-3"
 TOTAL DISTANCE - EYEBOLT TO (A) 4'-1 7/8"
 LENGTH OF CABLE FROM (A)
 25% OF 12" SHV CIR 9 3/8"
 E CAR SHEAVE TO E IDLER 1'-1 1/2"
 50% OF IDLER CIR 1'-6 3/4"
 E IDLER SHV TO (B) 4'-2" 7'-7 1/2"
 TOTAL DISTANCE EYEBOLT TO (B) 11'-9 1/2"

FOR EVERY FOOT THE CAR IS
 BELOW THE TOP ADD ONE FOOT
 TO (A) DISTANCE AND TWO FEET
 TO (B) DISTANCE.

TRUNK OF
 ENGINEER'S PLATFORM
 HOIST FOR
 LYKES BROS

ENERGY ELEVATOR CO
 CH-62801/4

DETAIL SHOWING CAR PLATFORM STOPPED
 AT TOP OF HOISTWAY

OVERLAY OF APPELLEE'S EXHIBIT F
DIAGRAM OF THE PLATFORM RAISED
TO THE POINT WHERE THE CENTERS
OF THE PLATFORM SHEAVES ARE AT
THE LEVEL OF THE IDLER SHEAVE.

